

Remarks

Claims 1, 10, 16 and 23 have been amended.

Claims 8, 12 and 22 have been canceled.

To facilitate prosecution of this application, a terminal disclaimer is enclosed, thereby overcoming the rejection of claims 1-23 under the judicially created doctrine of obviousness type double patenting.

Assignee does not concur with the statement in the Office Action that "the Applicant has not disclosed why the particulars of the flanges are of importance or solve a state problem or provide an advantage over the prior art." (Office Action, page 3). No statute, regulation, or section of the MPEP requires Applicant to do so, and no support in the MPEP or otherwise is provided in the Office Action for this novel requirement.

35 U.S.C. §102

MPEP 2131 quotes Verdegaal Brothers v. Union Oil of California, 814 F.2d 628, 631 (Fed. Cir. 1987) for the legal standard of anticipation: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (emphasis added).

Claims 1-9

Independent claim 1 has been amended to include the limitations of dependent claim 8. The Office Action had rejected dependent claim 8 under 35 U.S.C. §102, but not claim 9. However, this is believed to be in error. Claim 8 was directed to at least one inner flange member being substantially radially offset from at least one outer flange member. Claim 12, which depends from claim 10, and claim 22, which erroneously depended from claim 10 but had been intended to depend from claim 16, are identical, also being directed to at least one

inner flange member being substantially radially offset from at least one outer flange member. Claims 12 and 22 were not rejected in the Office Action under 35 U.S.C. §102. Thus, because claims 8, 12 and 22 were identical, it is believed that the Office Action intended to reject claim 9, not claim 8. Claim 1 has been amended accordingly.

Consequently, it is believed that claim 1 is in condition for allowance. Claims 2-7 and 9 depend from claim 1, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

Claims 10-15

Independent claim 10 has been amended to include the limitations of claim 12, which was not rejected under 35 U.S.C. §102. Consequently, it is believed that claim 10 is in condition for allowance. Claims 11 and 13-15 depend from claim 10, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

Claims 16-23

Independent claim 16 has been amended to include the limitations of claim 22, which was not rejected under 35 U.S.C. §102. Claim 22, which erroneously depended from claim 10, had been intended to depend from claim 16. It is believed that claim 16 is in condition for allowance. Claims 17-21 and 23 depend from claim 16, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III).

REQUEST FOR ALLOWANCE

Allowance of the pending claims is respectfully solicited. Please contact the undersigned if there are any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. A. Schar', written over the closing 'submitted,'.

Brian A. Schar
Chief Patent Counsel
Attorney for Cardica, Inc.
Reg. No. 45,076
Tel. No. (650) 331-7162